No. 76-280

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1976

GEORGE B. FORSTER, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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This suit was brought in the Court of Claims by retired postal inspectors seeking payment for uncompensated overtime work. They contend that the federal statutes governing overtime compensation establish an irrational classification: while other civil service employees are paid extra compensation for work in excess of 40 hours per week (see 5 U.S.C. 5542), postal inspectors have long been paid on the basis of a 48-hour week. See 5 U.S.C. (1964 ed., Supp. II) 5541(2)(vi); 39 U.S.C. (1964 ed.) 3541 (d)(3); 39 U.S.C. 1005(f); U.S. Postal Service Manual §755.151. This long-standing difference in treatment, petitioners contend, "constitute[s] an invidious discrimination in violation of the due process clause of the Fifth Amendment" (Pet. 10).

The Court of Claims correctly rejected petitioners' constitutional claim, both initially on the government's motion for summary judgment (Pet. App. A3-A4) and

subsequently on petitioners' motion for reopening and reconsideration (Pet. App. A1-A2). No further review is warranted.

The postal field service, of which petitioners were a part, is unique. Many of the positions in the postal field service (*e.g.*, mail handlers, special delivery messengers, transfer clerks, postal inspectors, and postmasters) have little relationship to the positions in other executive agencies. Postal service business continues seven days a week, and many employees must work non-business hours if mail service is to be efficient. With the 1970 reorganization, creating the Postal Service as an "independent establishment of the executive branch" (39 U.S.C. 201), the pay of postal employees was increased by eight percent, in addition to the government-wide increase of six percent. H.R. Rep. No. 91-1104, 91st Cong., 2d Sess. 2, 9, 11 (1970). Employees were also given the opportunity for faster promotion. *Id.* at 9-10. Labor-management relations were made subject to the National Labor Relations Act, with binding arbitration provided for in the event of a bargaining impasse. *Id.* at 2, 8, 10, 14-15. These and other differences make it clear that the hours, rights, and functions of postal field service employees are quite different from those of other civil service employees.

Although the duties of postal inspectors may be similar in some respects to the duties of other federal criminal investigators, it does not follow that the terms and conditions of employment for all such personnel must be identical. As the Court of Claims correctly held (Pet. App. A4):

> The postal field service * * * is properly classified as a separate entity for compensation purposes. It is unique, a fact long recognized by Congress. The exclusion of the postal field service from application of Title 5 premium pay provisions is

> based upon a reasonable appreciation of this uniqueness. Only an invidious discrimination violates equal protection. *Lenhausen* v. *Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973); *Williamson* v. *Lee Optical, Inc.*, 348 U.S. 483, 489 (1955). There is no such discrimination here.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

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